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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,816

06/24/2005

Seiki Tamura

71,051-011

6348

27305

7590

10/06/2009

HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak, MI 48067

EXAMINER

MATTISON, LORI K

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

10/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/540,816</p>	<p>Applicant(s) TAMURA, SEIKI</p>	
	<p>Examiner LORI MATTISON</p>	<p>Art Unit 1619</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuations sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Anne Marie Grunberg/
Supervisory Patent Examiner, Art Unit 1661

/LORI MATTISON/
Examiner, Art Unit 1619

Applicant alleges that the examiner has set forth a complex selection of optional moieties and particular substituents from a potentially infinite number of possibilities disclosed by the general formula of the '891 patent and that the Examiner failed to set a reason for selection of these substituents (Reply, page 11, last paragraph; page 16, paragraph 3). Applicant further alleges that it is intended use which drives one of ordinary skill to optimize a compound (Reply, page 12, paragraph 1). Applicant asserts that the recited polymer is intended for use in cosmetic compositions whereas that of the prior art is intended as an antifoam agent (Reply, page 12, paragraph 1; page 17, paragraph 1).

Applicant's traverse has been carefully considered but is not persuasive. The rejection is maintained for reasons of record. With regard to Applicant's traverse regarding selection of moieties in accordance to the intended use. The '891 prior art teaches use of the polymer as a foam stabilizer (see prior office action). One of ordinary skill in the cosmetics arts, at the time the invention was made, recognized that foam stabilizers may be used included in cosmetic compositions. Foam stabilizers were particularly known for use in hair cosmetics such as hair dyes and hair shampoos. They were also used in skin cleansers. Thus, the polymer taught by the '891 prior art may be used in cosmetic compositions. With regard to the selection of substituents, the number of time each block is repeated, the molecular weight of the block, and the ratios to form the copolymer, as discussed in the prior office actions, are taught by the '891 prior art. The '891 prior art also embodies particular moieties and the presence or absence of particular substituents in Table 1.

Applicant alleges that the '891 patent fails to teach the elected species of polymer because the O group and the C₂H₄O moiety are reversed (Reply, page 13, paragraph 2).

Applicant's traverse has been carefully considered but is not persuasive. The rejection is maintained for reasons of record. With regard the C₂H₄O moiety and the oxygen group being reversed, the claimed species of instant application is merely a position isomer of the prior art. Position isomers are obvious in view of each other as they comprise the same functional moieties, resulting in similar chemical properties.